

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-090539 |
| | : | TRIAL NO. B-0805733 |
| Plaintiff-Appellee, | : | |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| JAYMES KING, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On June 8, 2009, defendant-appellant Jaymes King pleaded guilty to one count of robbery, a third-degree felony. Before accepting King’s guilty plea, the trial court asked King, “I can put you on community control for up to five years with a probation officer, or I can send you to prison for up to five years; do you understand that?” King replied, “Yes, sir.” The trial court accepted King’s plea and proceeded to find him guilty of the robbery charge.

On July 13, 2009, the trial court conducted King’s sentencing hearing. Before sentencing King, the trial court considered King’s personal and criminal history, King’s presentence-investigation report, and an investigation report from the court’s clinic. The court then sentenced King to three years’ incarceration, specifically determining that King posed a danger to the community and that the Ohio Department of Corrections was better suited to deal with King than the Hamilton

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

County Probation Department. King has timely appealed, asserting three assignments of error.

In his first assignment of error, King argues that the trial court erred to his prejudice by sentencing him to three years in prison, contrary to the plea discussions. According to King, the parties had agreed upon a sentence of community control, which the trial court ignored when it sentenced King to three years' incarceration. King further argues that by ignoring the parties' agreement, the trial court abused its discretion, and that King's subsequent sentence was contrary to law.

King's first assignment of error fails for several reasons. First, after a thorough review of the record, we cannot find any evidence of any agreement between King and the trial court concerning his sentence. In fact, as we have previously noted, the trial court specifically asked King if he understood that the court had the discretion to sentence him to up to five years of community control or up to five years' incarceration. King affirmatively answered that he understood. The trial court's sentence of three years' incarceration was within the statutory limits for a third-degree felony,² so the sentence was not contrary to law.³ Further, the trial court carefully considered numerous factors before sentencing King, including King's personal history, his criminal history, a presentence investigation, and a report from the court's clinic. There simply is no indication in the record that the trial court abused its discretion.⁴ Accordingly, we overrule King's first assignment of error.

In his second assignment of error, King argues that, because the trial court's sentence was contrary to what he was led to believe it would be, his guilty plea was not entered voluntarily, and, therefore, enforcement of the plea was unconstitutional.

King's second assignment of error fails for the same reason his first assignment of error failed: there is no evidence in the record of any agreement

² R.C. 2929.14(A)(3).

³ See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470; *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

⁴ *Id.*

between King and the trial court concerning his sentence. We reiterate that King was asked if he understood that the court could sentence him to community control or to a prison term. King stated that he understood. King cannot now argue that there was anything misleading in what occurred before the trial court sentenced him to a prison term. King was given a full hearing pursuant to Crim.R. 11, and the trial court determined that his plea was given knowingly, intelligently, and voluntarily. There is nothing in the record that contradicts this conclusion. King's second assignment of error is overruled.

In his third assignment of error, King argues that the trial court erred by incorrectly limiting his right to file a motion for judicial release. The trial court's judgment entry states that King is not eligible for judicial release until there is less than six months remaining on his sentence. King asserts that this is contrary to R.C. 2929.20(C)(2), which provides that if a defendant's prison term exceeds two years (but is less than five years), he may file a motion for judicial release after 180 days of incarceration.

The Seventh Appellate District has dealt with a similar issue in *State v. Keylor*.⁵ In *Keylor*, it held that R.C. 2929.20 "does not limit a trial court's discretion with respect to denying a motion for judicial release in any way."⁶ The trial court had announced at the sentencing hearing in *Keylor* that it would not grant the defendant's motion for judicial release until she had paid the court-imposed fines.⁷ The Seventh Appellate District determined that the trial court was simply announcing ahead of time that it would not grant a motion for judicial release until the fine was paid.⁸ It further concluded that the denial of a motion for judicial release is not a final appealable order, and that it saw no difference between the trial

⁵ 7th Dist. No. 02 MO 12, 2003-Ohio-3491.

⁶ Id. at ¶21.

⁷ Id. at ¶18.

⁸ Id.

court announcing at the sentencing hearing that it would not consider a future motion for judicial release and the actual denial of such a motion when it was filed.⁹

We find the reasoning of the *Keylor* court dispositive in this case. Just as the Seventh Appellate District did not allow the defendant in *Keylor* to argue the impropriety of the trial court's refusal to consider a motion for judicial release until certain court-imposed conditions had been met, we refuse to allow King to raise the same argument in this case. The trial court is not preventing King from filing a motion for judicial release; it is simply stating to King that any motion for judicial release will be denied if it is filed with six months or more remaining on his sentence. Because the denial of a motion for judicial release is not a final appealable order,¹⁰ King cannot argue this alleged error simply because the trial court made an announcement at the sentencing hearing rather than when a motion for judicial release was actually made.¹¹ King's third assignment of error is overruled.

Finding no merit to any of King's three assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 21, 2010

per order of the Court _____.
Presiding Judge

⁹ Id.

¹⁰ *State v. Woods* (2001), 141 Ohio App.3d 549, 550, 752 N.E.2d 309.

¹¹ *Keylor*, supra, at ¶21.